

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 06-3790 (DSD/FLN)

Anthony Lee Nelson,

Petitioner,

v.

ORDER

Joan Fabian, Commissioner
of Corrections,

Defendant.

This matter is before the court upon petitioner Anthony Lee Nelson's objections to the report and recommendation of Magistrate Judge Franklin L. Noel dated June 5, 2007. In his report, the magistrate judge concluded that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 should be dismissed with prejudice.

The court reviews the report and recommendation of the magistrate judge de novo. 28 U.S.C. § 636(b)(1)(C). In his first three objections to the magistrate judge's report and recommendation, petitioner raised no new legal arguments or apposite legal authority to buttress his claims. However, the court finds that the report and recommendation of the magistrate judge is well reasoned and correctly disposes of petitioner's claims.

As to his final objection, that the magistrate judge erred by granting the State of Minnesota an extension to file a response,

petitioner again offers no legal authority to support his claim. Pursuant to Federal Rule of Civil Procedure 6(b), the court may grant an enlargement of time to file a document "where the failure to act was the result of excusable neglect." The magistrate judge determined that the state's failure to act was the result of excusable neglect and granted the state's request for extension. Petitioner's fourth objection is in effect an untimely appeal of a nondispositive ruling by the magistrate judge that was neither clearly erroneous nor contrary to law. See 28 U.S.C. § 636(b)(1)(A). Upon a review of the record, the court agrees with the magistrate's determination.

For these reasons, the court adopts the report and recommendation of the magistrate judge [Doc. No. 17] in its entirety.

Further, the court determines that petitioner has not made a "substantial showing of the denial of a constitutional right" as required by 28 U.S.C. § 2253(c)(2). Thus the court does not grant a certificate of appealability.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's application for habeas corpus relief under 28 U.S.C. § 2254 [Doc. No. 1] is dismissed with prejudice.

2. For purposes of appeal, the court does not certify the issues addressed herein pursuant to 28 U.S.C. § 2253(c)(2).

Dated: July 16, 2007

s/David S. Doty
David S. Doty, Judge
United States District Court